

In the Supreme Court of the State of Alaska

**Alaina Adkins and Maxim Healthcare
Services, Inc.,**

Appellants,

v.

Jesse Michael Collens,

Appellee.

Supreme Court No. S-16930

Order

Stay of Execution of Judgment

Date of Order: **September 12, 2019**

Trial Court Case No. **3AN-14-05961CI**

Maxim Healthcare Services, Inc. has filed a motion for a stay of execution of the superior court's judgment pending its petition for a writ of certiorari to the United States Supreme Court. Maxim argues that we should consider three factors to determine whether to grant a stay:

1. The plaintiff must be faced with irreparable harm.
2. The opposing party must be adequately protected.
3. The plaintiff must raise "serious" and "substantial" questions going to the merits of the case; that is, the issues raised cannot be "frivolous or obviously without merit."¹

Maxim argues that it will suffer serious financial harm if Jesse Collens executes on the judgment and that Collens will be unable to repay the judgment if it is reversed. Maxim has established a likelihood that it may be faced with

¹ *Keystone Services, Inc. v. Alaska Transp. Commission*, 568 P.2d 952, 954 (Alaska 1977).

irreparable harm.

In response, Collens attests that without the funds from the judgment he suffers ongoing threats to his health. These ongoing health challenges cannot be adequately protected by a bond to secure a future payment.

On the third factor, Maxim makes a convincing argument that it has serious and substantial questions to raise concerning whether the treble damages awarded under the Alaska Unfair Trade Practices Act (and potentially the punitive damage awards) violate the Due Process Clause of the Fourteenth Amendment. But Maxim does not make any substantial arguments about any other portions of the judgment.

IT IS THEREFORE ORDERED that the motion for a stay pending Maxim's petition for a writ of certiorari is **GRANTED** on the following conditions:

1. The stay is not effective until Maxim pays Collens (1) the award of compensatory damages for breach of contract (approx. \$4.3 million), (2) the award of damages for intentional infliction of emotional distress (\$400,000), (3) the costs awarded to Collens as the prevailing party, and (4) the interest that has accrued on these parts of the judgment. Collens shall file a notice of satisfaction once this payment has been made.
2. The current appeal bond shall remain effective to secure payment of the balance of judgment.

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The motion for leave to file a reply is also **GRANTED**.

Entered by direction of an individual justice.

Clerk of the Appellate Courts

A handwritten signature in dark ink, appearing to read 'Ryan Montgomery-Sythe', is written over a horizontal line.

Ryan Montgomery-Sythe, Chief Deputy Clerk

cc: Judge Morse
Trial Court Appeals Clerk

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